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HAROLD B. WILLEY, Cle

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 779

MISSION CORPORATION,

Petitioner,

vs.

ISADORE BLAU, a stockholder of TIDE WATER ASSOCIATED OIL COMPANY, suing on behalf of himself and all other stockholders similarly situated and on behalf of and in the right of TIDE WATER ASSOCIATED OIL COMPANY,

and

TIDE WATER ASSOCIATED OIL COMPANY,

Respondents.

BRIEF FOR RESPONDENT, ISADORE BLAU, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Opinions Below

The opinion of the District Court (R. 15a-21a Pltf. Append.) is reported in 113 F. Supp. 153.

The opinions of the United States Court of Appeals (R. 49-54, 76-77) have not yet been officially reported.

Jurisdiction

The judgment of the United States Court of Appeals was entered April 19, 1954 (R. 78). The petition for a writ of certiorari was filed on May 21, 1954.

The jurisdiction of this Court is invoked under Section 1254 of Title 28, United States Code, which is made applicable by Section 27 of the Securities Exchange Act of 1934 (15 U.S.C.A. 78aa).

Statutes Involved

Section 16(b) of the Securities Exchange Act of 1934 (Section 78p(b) of Title 15 U.S.C.A.) so far as is here pertinent, reads as follows:

> "For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. * * * "

Section 3(a) subdivision 14 of the Securities Exchange Act of 1934 (Section 78c(a) subdivision 14 of Title 15 U.S.C.A.) reads as follows:

> "The terms 'sale' and 'sell' each *include any contract to* sell or *otherwise dispose of.*" (Italics supplied)

Summary Statement of the Matter Involved

The question of law presented by the petition for writ of certiorari is predicated entirely upon the particular facts herein set forth and is of limited application for the administration of the statutes involved. The facts are peculiar to the petitioner and are not of general incidence.

The respondent, Isadore Blau, a stockholder of Tide Water Associated Oil Company (hereinafter referred to as Tide Water), commenced an action on its behalf and for its benefit pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934 to recover the "short-swing" profits realized by petitioner, Mission Corporation (hereinafter referred to as Mission), the beneficial owner of more than ten (10%) per cent of Tide Water's equity securities.

Two *separate* transactions were involved. In the first, Mission *exchanged* 1,416,693 shares of its Tide Water common stock for 2,833,386 shares of the common stock of Mission Development Company (hereinafter referred to as Development). (R. 4a Pltf. Append.) At this point Mission was the owner of 100% of Development. (R. 7a Pltf. Append.) During the ensuing six months Mission *purchased* Tide Water shares at a price *less than* the stipulated fair market price of Tide Water on the date of the exchange. (R. 5a Pltf. Append.)

In the courts below the respondent contended that this first exchange by Mission of its Tide Water stock constituted a "sale" thereof within the meaning and intent of Section 3(a)(14) of the Securities Exchange Act of 1934.

However, the District Court decided that this first exchange by Mission of its Tide Water stock did not constitute a "sale" thereof because Mission at that time owned 100% of Development and the transfer merely con-

stituted "an exchange by a single personality of its assets from one of its pockets to another." (R. 20a Pltf. Append.) In affirming the District Court's decision with respect to this *first* exchange, the United States Court of Appeals stated in its opinion that since "Development was at the time wholly owned by Mission" *this* transaction was "a mere transfer between corporate pockets." (R. 51)

The *second* transaction, which is the basis for petitioner's application for writ of certiorari, took place on January 17, 1951. At the time, Mission owned *only 35%* of Development's stock. (R. 7a Pltf. Append.) The remaining 65% of Development's stock was held by the *general public*. On that date Mission *exchanged* 1,050,420 shares of its Tide Water stock for 2,100,840 shares of Development stock. (R. 8a Pltf. Append.). During the six month period immediately prior to this *second* exchange Mission had purchased shares of Tide Water at prices *less than* its stipulated fair market price on January 17, 1951.

Respondent contended that this *second* exchange by Mission of its Tide Water stock constituted a "sale" thereof within the meaning and intent of Section 3(a)(14) of the Securities Exchange Act of 1934, and that the profits realized by Mission as a result of its purchases and sales of the Tide Water stock within this six month period were recoverable pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934.

In reversing the judgment of the District Court, which had ruled that the *second* exchange of Tide Water stock did not constitute a "sale" thereof, the United States Court of Appeals held that at the time of this *second* exchange "Development was no longer just an alter ego of Mission" since "its shares were freely traded" and there was an existing market and extensive *public ownership* of Development (R. 53).

The United States Court of Appeals remanded the action to the District Court for the purpose of calculating

the profits recoverable from Mission from this *second* transaction in accordance with instructions set forth therefor in its opinions (R. 54, 76-77).

Questions Presented

1. Did the *second* exchange by Mission of its Tide Water stock on January 17, 1951, constitute a "sale" thereof within the meaning and intent of Section 16(b) of the Securities Exchange Act of 1934?

2. Did Mission realize a profit on January 17, 1951 as a result of its "short-swing" transactions in Tide Water stock.

3. Is it necessary to prove that Mission made actual use of inside information to sustain a recovery under Section 16(b) of the Securities Exchange Act of 1934?

POINT I

The exchange of Tide Water Stock by Mission on January 17, 1951, constituted a "sale" thereof within the meaning and intent of Sections 3(a)(14) and 16(b) of the Securities Exchange Act of 1934.

Section 3(a) (14) of the Securities Exchange Act of 1934, Title 15 U. S. C. A. Section 78c(a)(14) provides:

> "The term 'sale' and 'sell' each include any contract to sell or otherwise dispose of."

The words "sale" and "sell" were not specifically defined by the Act. However, by enlarging its scope under Section 3(a)(14), *supra,* Congress disclosed a clear intent to give these words a broad unrestricted meaning. Its full import is to be sought, therefore, from its associated words and the declared purpose of the Act.

Funk & Wagnall's New Standard Dictionary of the English language (p. 2162) defines the word "sale", as commonly used and understood, to mean as follows:

> "The act of selling; *the exchange* of real or personal property for money or its equivalent." (Italics supplied.)

The word "sale" ordinarily represents an executed transaction. In declaring that the word *includes* "any contract to sell or otherwise dispose of", Section 3(a) (14) has added the *executory* transaction as well. Had it been the Legislative intent to restrict the application of the Act to only a cash transaction, it would have been entirely extraneous and unnecessary to broaden the meaning of the word "sale" to include "any contract to * * * otherwise dispose of." The purpose of thus broadening the ordinary definition of the term "sale" shows the Legislative intent to include therein *any disposition* of securities, and this would necessarily include an "exchange" of securities.

Ballantine's Law Dictionary (p. 460) defines the term "exchange" as follows:

> "An executed contract which operates *per se* as a reciprocal conveyance of the thing given and of the thing received in exchange, *each of the parties being individually considered in the double light of vendor and vendee.*" (Italics supplied.)

Thus when Mission exchanged its Tide Water stock for Development stock, it was the "vendor" of the Tide Water stock, "the thing given * * * in exchange." Since by its very definition a "vendor" is one who *sells* something, it follows that Mission made a "sale" of the Tide Water stock on the dates of the exchange.

In 33 *Corpus Juris Secundum* at page 5 it is stated:

> "It has frequently been held or stated that there is no substantial difference between a sale and an exchange; and the legal effect of a contract of exchange is generally the same as that of a contract of sale. In both cases the title is absolutely transferred and both transactions are governed by the same rules of law practically. In law an exchange is recognized as two sales or a double sale, and an exchange of real estate is as to each one of the parties a sale and purchase of property. *The term 'sale' may be construed as including an exchange * * * and indeed exchanges are frequently denominated 'sales' * * *.*" (Italics supplied.)

In an article written by Eustace Seligman for the Virginia Law Review, entitled "Problems Under the Securities Exchange Act", 21 Va. L. Rev. 1, 21, the author states:

> "* * *. *The term 'sale' probably includes exchange.* Consequently if a 10% stockholder within six months of acquiring the stock joins with all other stockholders in exchanging his stock for stock of another corporation, the transaction might come within the wording of Section 16(b) * * *." (Italics supplied.)

In interpreting the definition of "sale" as defined in Section 2b(3) of the Securities Exchange Act of 1933, 15 U. S. C. A. Section 77b(3),* which is analogous to the definition of the term "sale" as defined in Section 3(a)(14) of the Securities Exchange Act of 1934, *supra*, the Courts have ruled that an "Exchange" of securities for

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* "The terms 'sale,' 'sell,' 'offer to sell,' or 'offer for sale' shall include every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value; * * *."

other securities or property is a "Sale." Thus in *United States* v. *Riedel* (C. C. A. 7, 1942), 126 F. 2d 81, 83, the Court said:

> "• • • Courts have given this Act and its language, a liberal construction, one consistent with its purpose. Under these authorities *we are convinced a sale may include an exchange of property.* In other words, one may sell a security and be paid therefor in cash, or another security, or any other object of value such as a house—a horse, etc." (Italics supplied.)

In *United States* v. *Werner* (C. C. A. 7, 1946), 157 F. 2d 797, 799, the Court said:

> "• • • We think the beneficial trust certificates here involved easily fall within this definition • • • and that the *offer to exchange* them for the limited partnership certificates *constitutes a sale* within the meaning of the same section, under the ruling of this Court in *United States* v. *Riedel, supra.*" (Italics supplied.)

And in *Gruver* v. *Commissioner of Internal Revenue* (C. C. A. 4), 142 F. 2d 363, 365-366, the Court said:

> "It is no distortion of language to employ the term 'sale' so as to cover or include an exchange of property."

In *Park & Tilford, Inc.*, v. *Schulte* (C. C. A. 2), 160 F. 2d 984, Cert. denied, 68 S. Ct. 64, the Court was confronted with the converse issue herein involved. In that case, the plaintiff stockholder suing under Section 16 (b) of the Act, contended that the exchange or conversion by the defendants of their preferred stock in Park & Tilford, Inc., for common stock therein constituted a "*purchase*" of the common stock within the definition set forth in Section 3 (a) (13) of the Securities Exchange Act of 1934, 15 U. S. C. A., Section 78c (a) (13), which provides:

"The terms 'buy' and 'purchase' each *include any contract to* buy, purchase, or *otherwise acquire.*" (Italics supplied.)

In holding that the *receipt* by defendants of common stock *in exchange* for their preferred stock constituted a *"purchase"* within the meaning and intent of Section 16(b) of the Act, the Court said (p. 987):

> "We think a conversion of preferred into common stock followed by a sale within six months is a 'purchase and sale' within the statutory language of Section 16 (b). Whatever doubt might otherwise exist as to whether a conversion is a 'purchase' is dispelled by definition of 'purchase' to include 'any contract to buy, purchase or otherwise acquire' Sect. 3(a) (13). * * *."

Thus, in ruling that the common stock *received* by defendants *in exchange* for their preferred stock constituted a *"purchase"* of common stock, the Court *impliedly* held that the *disposition* by defendants of their preferred stock *given in exchange* constituted a *"sale"* of the preferred stock.

Thus, if the Court's ruling in the case of *Park & Tilford, Inc.* v. *Schulte, supra,* were applied to the facts in this case, it would follow that the Development stock *received* by Mission *in exchange* for its Tide Water stock constituted a *"purchase"* of the Development stock, and that the *disposition* by Mission of its Tide Water stock *given in exchange* constituted a *"sale"* of the Tide Water stock.

That the disposition of securities by exchange is a "sale" under the Securities Act has been further upheld in 48 Yale Law Journal 149, 1952, wherein it is stated:

> "* * * It has been held and is thoroughly consonant with legislative intent that an exchange is within the

purview of the Securities Act. Numerous states have also construed a disposition by way of exchange as a 'sale' in order to bring it within the scope of their 'Blue Sky Laws.' "

Additional support for respondent's contention that the second exchange of Tide Water stock by Mission constituted a "sale" thereof, and that Mission *knew and conceded* that such exchange was, indeed, "sale" of its Tide Water stock, is substantiated by the exhibits annexed to and forming part of the stipulation of facts in this case and in the exhibits annexed to and forming part of the cross-motion for summary judgment made by defendant, Mission.

It has been conceded that inasmuch as the transaction involving the second exchange of stock between Mission and Development was prohibited by Section 17 (a) of the Investment Company Act of 1940, unless an exemption therefor were granted pursuant to Section 17 (b) of that Act, application for such exemption was made and thereafter granted by the Securities and Exchange Commission (R. 5a, 8a-9a Pltf. Append.).

Section 17 (a) (1) of the Investment Company Act of 1940, insofar as is here material, provides as follows:

> "It shall be unlawful for any affiliated person or promoter of * * * a registered investment company * * *
> "Knowingly *to sell* any security or other property to a registered company, * * *." (Italics supplied.)

Thus, implicit with its application to the Securities and Exchange Commission for permission to exchange its Tide Water stock for Development stock, Mission was *fully cognizant* that the *exchange* of its Tide Water stock constituted a *"sale"* thereof.

Indeed, in an "excerpt from Minutes of the Meeting of the Board of Directors of Mission Corporation held December 1, 1950," the president of Mission stated "that he was advised by counsel that under Section 17 of the Investment Company Act of 1940, it is not permissible for an affiliated corporation *to sell any security* or other property to a registered investment company * * * unless application should first be made to the Securities and Exchange Commission for an order exempting the proposed transaction and the Commission should grant such application." (R. 21a Deft. Append.)

Finally, the order of the Securities and Exchange Commission which granted permission to Mission to exchange its Tide Water stock specifically refers to this exchange as "proposed transaction involving *the sale* of all of the common stock of Tide Water Associated Oil Company owned by Mission Corporation * * * to Mission Development Company," and refers to the application as involving "the question of the exemption *of the sale* of Mission Corporation's holdings of Tide Water Associated Oil Company stock." (R. 25a-27a Deft. Append.)

It is respectfully submitted that since the second exchange by Mission of its Tide Water stock constituted a "sale" thereof within the meaning and intent of Section 16 (b) of the Securities Exchange Act of 1934, and since it has been conceded that Mission was the direct beneficial owner of more than ten (10%) per cent of Tide Water's equity securities between the six-month period, July 18, 1950, and January 17, 1951 and made purchases of Tide Water stock within that period all profits realized by it as a result of its short-swing transactions in Tide Water stock are recoverable under the Act.

POINT 2

A. Mission realized a profit on January 17, 1951, as a result of its "short-swing" transaction in Tide Water stock.

Mission contends (Pet. Br. pp. 20-22) that "no profits were or could have been realized" by it from its "short-swing" transactions in Tide Water stock because it received no actual *money* from the sale of its Tide Water stock to Development on January 17, 1951.

Petitioner erroneously contends that a profit can *only* be "realized" where there is a *cash* transaction. Had this been the intention of Congress it would have been wholly unnecessary and superfluous for it to have enacted Section 3(a)(14) of the Securities Exchange Act of 1934 so as to broaden the terms "sale" and "sell" to "include any contract to sell *or otherwise dispose of.*" The purpose of enlarging the ordinary definition of "sale" and "sell" was obviously intended to include not only an ordinary sale for *cash*, but also a sale by way of an exchange of securities. Since Section 16(b) of the Act permits the recovery of any short-swing profits "realized * * * from any purchase and sale", it is a gross distortion of the legislative intent to contend that although a "sale" may be effected for something *other* than cash, the profit "realized" as a result of such "sale" must mean *only a cash* profit.

Since the Development stock received by Mission on January 17, 1951 had a market value *greater* than the cost of its Tide Water stock exchanged therefor—the difference represented its profits. Cash is merely a more facile way of enabling one to barter. Mission Corporation could have converted its profits into *cash* by selling its Tide Water shares for cash in the first instance instead of exchanging them for Development stock. The

fact that the *form* of the profit was represented by *stock* and not cash does not detract one iota from the actuality that it was still a profit realized.

As the Court stated in *Gordon* v. *Westtown Electric & Appliance Co.* (C. A. 3), 103 F. 2d 137, 139:

> "It cannot be doubted that a corporation which has acquired certain property for $36,000, and later trades or exchanges it for other property worth $957,000, has made a profit within the ordinary sense of the term, for a profit is generally understood as 'the excess of what is obtained over the cost of obtaining it.' 50 C. J. 644; *Hentz* v. *Pennsylvania Company for Insurance of Lives, etc.,* 134 Pa. 343, 19 A. 685. Therefore, as a result of the exchange of securities mentioned above Yeager realized a definite 'gain' or 'profit' and the fact that the revenue act failed to 'recognize' that as a taxable 'gain' could not alter the situation."

And in *Dorsey* v. *Commissioner of Internal Revenue* (C. A. 5), 76 F. 2d 339, 340-341, a corporation had sold a building receiving shares of stock therefor. The difference between the value of the stock received and the cost of the building was held to be a profit "realized" *at the time of the exchange.* In its opinion the Court stated:

> "* * * The statute does not postpone realization until a resale of the stock received or a liquidation of it, but if the stock when got has a fair market value which could be realized in money if the corporation were so minded, the gain is declared realized forthwith."

Petitioner further contends that no profits "were brought into concrete existence" by reason of its exchange of Tide Water stock in January 17, 1951, because its "control and beneficial ownership" in the Tide Water stock exchanged "were not altered by the transaction." (Pet. Br. pp. 20-21)

The fallacy of this contention is proven by the facts. Thus, *prior* to the exchange of its Tide Water stock on January 17, 1951, petitioner owned directly 100% of those shares and had full and complete control of its disposition. *After* the exchange, however, Mission no longer owned this stock, and could no longer sell or keep the entire proceeds of any such sale or other disposition thereof. It now had only a *63% interest* in Development (R. 7a Pltf. Append.). The only person who could sell or otherwise dispose of the Tide Water stock *after* this exchange was Development. Even had Development thereafter sold the Tide Water stock and distributed the entire proceeds to its stockholders, Mission would only have been entitled to receive *63%* thereof, that being its proportionate stock interest in Development at the time. The United States Court of Appeals recognized this fact when it stated in its opinion that "Mission therefore received for its Tide Water stock securities which were readily salable and of independent market value." (R. 53)

B. Proof of actual use of inside information is wholly immaterial to recovery under Section 16(b) of the act.

Petitioner contends that it could not have benefited "from inside knowledge as to Tide Water or Development in respect of the Development shares received on the exchange" (Pet. Br. p. 22). Here, as in the cases of *Park & Tilford, Inc.* v. *Schulte* (C. A. 2), 160 F. 2d 984, Cert. denied 332 U. S. 761, *Smolowe* v. *Delendo Corporation*, (C. A. 2), 136 F. 2d 231, Cert. denied 320 U. C. 751, and *Gratz* v. *Claughton* (C. A. 2), 187 F. 2d 46, Cert. denied 341 U. S. 920, petitioner urges that it could not possibly have made use of inside information even if it had such information.

It is quite clear that Section 16(b) does not require any proof that the insider could have or actually did make use

of such information. Because it was general knowledge that insiders frequently had information from which they benefited at the expense of the other stockholders, the statute sought to remedy this evil by discouraging such transactions. The statute merely requires certain categorized individuals to turn over all "short-swing" profits *regardless* whether they actually had such information or made use thereof.

As the Court of Appeals stated in *Smolowe* v. *Delendo Corporation, supra*, at pages 235, 240:

> "It is apparent too from the language of Section 16(b) itself, as well as from the Congressional hearings, that the only remedy which its framers deemed effective for this reform was the imposition of a liability based upon an objective measure of proof.
>
> • • • • • • • • •
>
> "Bona fide transactions too may be caught in the net of the law. • • •"

The general application of Section 16(b) is not limited to the unique facts which may be presented in any one particular case. The statute makes it *illegal* for an insider to effect short-swing transactions in his issuer's securities and this is so *regardless* of his good faith or his intentions not to profit from such transactions.

As the Court said in *Gratz* v. *Claughton, supra* (p. 50):

> "• • • If only those persons were liable, who could be proved to have a bargaining advantage, the execution of the statute would be so encumbered as to defeat its whole purpose. We do not mean that the interest, of which a statute deprives an individual, may never be so vital that he must not be given a trial of his personal guilt; but that is not so when all that is at stake is a director's officer's or 'beneficial owner's' privilege to add to, or subtract from, his holdings for a period

of six months. In such situations it is well settled that a statute may provide any means which can reasonably be thought necessary to deal with the evil, *even though they may cover instances where* it is not present. * * *" (Italics supplied.)

POINT 3

The reasons asserted by petitioner for issuing the Writ of Certiorari are not valid.

This case involves questions of construction of Sections 3(a)(14) and 16(b) of the Securities Exchange Act of 1934. The only cases which have heretofore interpreted these parts of the Act (and which are the only cases claimed by the petitioner as being in conflict with the decision below) were decided by the United States Court of Appeals for the Second Circuit.

The Court of Appeals for the Second Circuit, in the instant case considered its prior decisions and, instead of regarding them as conflicting in any way, cited them as authority for the conclusion reached.

As against the Court's interpretation of its own prior decisions, we have only the unsupported assertion by the petitioner that there is a conflict in the decisions of this Court of Appeals. There is not even an assertion by petitioner that there is a conflict between the decision in this case and any decision of a Court of Appeals of any other Circuit.

The cases which petitioner claims to be conflicting are *Shaw* v. *Dreyfus,* 172 F. 2d 140 (2d), Cert. denied 337 U. S. 907, and *Roberts* v. *Eaton* (2d) decided April 5, 1954, not yet officially reported but set forth in petitioner's brief at pages 26-33.

It is respectfully submitted that not only were the facts in the *Shaw* and *Eaton* cases materially different than those in this case but the issues presented in those cases obviously have no relation to the issues in this case.

The *Shaw* case involved two separate issues. The first was whether the receipt of rights to purchase common shares of stock, which were distributed to *all* the stockholders of the corporation in direct proportion to the number of shares owned, was a "purchase" under the Act. The Court held that it was not. The second issue presented in that case was whether a *gift* of stock by an insider was a "sale." Here again the Court held in the negative.

The *Eaton* case certainly does not represent a departure from the principles enunciated in the *Shaw* case but rather a reaffirmance of those principles. In the *Eaton* case, the stock of the issuer was reclassified and each stockholder received the reclassified stock upon the surrender of his original shares. The Court of Appeals, following the *Shaw* case, held that since the reclassified stock was given to *all* the stockholders of the corporation upon surrender of their original shares and in direct proportion thereto, the receipt thereof could not be considered a "purchase" under the Act.

In the *Shaw* case the insider had made a gift of his stock without receiving anything *tangible* therefor. In the case at bar, however, Mission received Development stock having a totally different market price and marketability than the Tide Water stock for which it was exchanged. In addition, the exchange of Tide Water for Development stock was *not* made equally available to the other stockholders of Tide Water.

The other ground asserted as a reason for granting this petition, aside from contentions that the Court below erred in its interpretation of the Act, is that the

Court below decided the case "without the guidance, as *amicus curiae* of the Securities and Exchange Commission" and that Mission "will be compelled to pay substantial damages."

From the standpoint of interest, this case merely involves an asserted liability of an insider to a private corporation on the special facts presented. From the standpoint of legal issues, this case presents only a question of the proper interpretation of Sections 3(a)(14) and 16(b) of the Securities Exchange Act of 1934. It is submitted that these are not matters of national scope, or of great concern to the investing public of the United States.

In both the *Delendo* and *Park & Tilford* cases, *supra*, the United States and its administrative body in charge of the enforcement of the Securities Exchange Act (The Securities and Exchange Commission) intervened or filed briefs as *amicus curiae*, indicating that they thought matters of national scope and public interest were there involved.

Despite the publication of the opinions below and knowledge that this case was pending by members of the Commission's staff, no effort has been made by any public authority to participate in this private litigation. The Commission is known to be both alert and painstaking where important matters involving construction or interpretations of the Securities Acts are concerned.

It seems fair to say that the non-action by the Commission under the circumstances indicates at least a tacit acquiescence in the interpretations of the Act reached by the Court of Appeals in this case.

The Case has been correctly decided and this Court should not be required to pass upon it again. Further review is not warranted.

CONCLUSION

The petition for a Writ of Certiorari should be denied.

June 1, 1954.

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